

# **CHAPTER 03**

## **VERIFICATION OF CHILD'S INDIAN STATUS**

**CHILDREN'S ADMINISTRATION  
INDIAN CHILD WELFARE MANUAL  
CHAPTER 03—VERIFICATION OF CHILD'S INDIAN STATUS**

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### **03.01 INTRODUCTION**

- A. CA social workers must identify whether a child is of Indian ancestry in order to preserve the child's culture and to ensure that the CA staff meet the requirements of the ICWA, state laws, and the WAC.
- B. CA social workers must identify a child as Indian early in the case activity. Such early identification is necessary to ensure that the Indian child is not traumatized by culturally inappropriate and/or illegal placements that must be interrupted at a later date to comply with the Indian placement requirements of the ICWA and/or WAC.
- C. All valid information regarding a person's membership status in the Tribe originates from the Tribe. The Tribe is the only authority that can verify a person's membership or eligibility for membership status.
- D. Tribal membership and tribal enrollment are not the same thing. Tribal enrollment is a process. About half of all Native Americans and Alaska Natives are formally enrolled in their Tribe. To be enrolled in a Tribe, a person must be a tribal member; membership in a Tribe is not dependent upon being enrolled. This is a very important distinction that all workers need to understand, since the ICWA applies to children who are members or eligible for membership in a Tribe, not just those who are enrolled in a Tribe.

### **03.05 APPLICATION OF INDIAN CHILD WELFARE MANUAL**

- A. Unless otherwise specifically indicated, the requirements of this Manual apply to all children meeting the definitions of Indian child found in Chapter 03.10(A) below.
- B. Unless otherwise specifically indicated, Chapter 11 of this Manual contains procedures applicable to Canadian First Nations and Recognized Indian Children, as defined in Chapter 3.10 (A)2 and 3. Regardless of enrollment or membership status, if the child is Indian, the social worker must follow the requirements of this chapter.

### **03.10 DEFINITIONS OF INDIAN CHILD**

- A. The requirements of this manual apply to different categories of Indian children. The individual child's category determines the law and procedures that apply in a particular case. For this reason, the social worker must understand the categories and take the necessary steps to identify the child's Indian category at the very outset of service involvement. The following definitions of categories of Indian children apply in this manual.
- B. The following definitions apply in this manual:
1. **"Indian child"** - An Indian child is an unmarried person under the age of 18 and who is either:
    - a. A member of a federally recognized Indian Tribe, including an Eskimo, Aleut or other Alaska Native; or
    - b. A child eligible for membership in a federally recognized Indian Tribe, including an Eskimo, Aleut or other Alaska Native and is the biological child of a member of a federally recognized Indian Tribe.
- 25 U. S. C. 1903(4)
2. **Washington State Indian Child** - An Indian child meeting the definition of "Indian Child" and whoses Tribe is a federally recognized Tribe located within the state of Washington.
  3. **"Canadian First Nations Indian Child"** - An unmarried person under the age of 18 who is a member of a treaty Tribe, Metis community, or a non-status community from Canada.

4. **"Recognized Indian Child"** – An unmarried person under age 18 who does not meet the definitions of Indian child, Washington State Indian Child, or Canadian First Nations Indian child. Regardless of enrollment or membership status, an recognized Indian child is a child considered to be an Indian by a federally or non-federally recognized Indian Tribe or off-reservation Indian/Alaska Native Community organization.

5. **Federally Recognized Indian Tribe**

"Federally Recognized Indian Tribe" means any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native Village. 25 U. S. C. 1903(8)

C. **Verification of Indian Status**

1. The CA social worker must obtain verification of a child's Indian status by an Indian Tribe or band, community, or non-tribal Indian organization in the form of a written affidavit, declaration, or other certified statement that states the basis by which the Indian Tribe or band, community, or non-tribal Indian organization has determined that the child is Indian.
2. When the social worker has been unable to verify a child's Indian status through **active efforts** to obtain verification from an Indian Tribe, the social worker may accept verification of the child's Indian status from a non-tribal Indian organization

- D. See Chapter 12, below, for a list of federally recognized Indian Tribes in the United States. The list is not totally accurate because it may not contain newly recognized Tribes. The social worker must contact the Tribe or the BIA directly for assistance in determining the current status of any unlisted Indian Tribe.

- E. Even in the case of an Indian child who is not an enrolled member of a federally recognized Tribe or a non-federally recognized Tribe, the social worker must seek to include the child's Tribe throughout every step of the case process.

**03.15 APPLICATION OF FEDERAL LAW, POLICIES, AND STATE WAC's**

- A. Application of federal and state laws as well as the WAC varies depending on the Indian child's definitional category.
- B. The Multi-Ethnic Placement Act (MEPA), as amended by the Interethnic Adoption Provisions (IEAP) amendments, 42 USC 671a, does not apply to Indian children meeting the definition of **Federally Recognized Indian Child**.
- C. CA has developed the *Indian Child Welfare Compliance Checklist*, DSHS 09-777, to assist the CA social worker in following the procedures in this Manual. The social worker must use the checklist as the face sheet for the ICW Section of the case record file, for easy reference.
- D. For Canadian First Nations Indian Children and Recognized Indian Children, follow provisions of Chapter 11.

**03.20 INQUIRY INTO CHILD'S INDIAN STATUS**

- A. The provisions of this section apply to Indian children of all categories. See Chapter 03.10 of this manual for definitions of the categories.



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- B. Upon acceptance of a case for service, the CA social worker must immediately seek to discover whether the involved child is of Indian ancestry. **The assigned social worker must do this in every case at every case transfer.** The social worker must document in the ICW section of the child's case file all efforts to discover a child's ancestry. At a minimum the social worker, including intake staff, must ask a referrer, the parent(s)/Indian custodian(s), the child (if the child is of sufficient age), and relatives of the child:

1. Whether the child is of Indian or native ancestry.

Alaska Native and Canadian First Nations often use terms other than "Indian" to describe their ancestry. For this reason, the social worker needs to inquire about "native" ancestry as well as "Indian" ancestry.

"First Nation," "from a band," and "aboriginal peoples" are also common terms used to describe Canadian First Nations ancestry. Canadian First Nations often use the terms "band" and "reserve" to denote "Tribe" and "reservation."

2. Whether the child is or has been the ward of any Tribal Court.
3. CA social workers must continue to inquire about the child's Indian status throughout the life of the case and document the results in the CAMIS SER. The worker needs to ask the parents and the parents' relatives, including grandparents, aunts and uncles, and adult siblings. Following are examples of points at which it would be appropriate to inquire:
  - a. Intake;
  - b. Placement;
  - c. 30-day review;
  - d. Filing of petition;

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- e. On the record at the shelter care hearing;
  - f. Case transfers;
  - g. Administrative reviews;
  - h. Child protective and multi-disciplinary team meetings;
  - i. Permanency planning staffings/adoption staffings;
  - j. Termination hearings; and
  - k. Other staffings, such as Sexually Aggressive Youth (SAY), Family Resource Panel, supervisory review, and relative home studies.
- C. The social worker must obtain from each parent a completed *Ethnic Identity Request*, DSHS 09-761.
- 1. The social worker files the original copy in the ICW section of the child's service file.
  - 2. Within 10 working days following the parent's completion of the form, the social worker provides a copy of the form to the regional or local LICWAC liaison or ICW compliance program manager, as applicable.
- D. The department must consider the child to be Indian if any one of the following circumstances exist:
- 1. Any party to the case, Indian Tribe, Indian organization, or public or private agency informs the social worker that the child is an Indian child.
  - 2. The referrer, the child, the child's parent(s)/Indian custodian(s), or relatives give reason to believe that the child is Indian.

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3. The social worker discovers information suggesting the child is Indian.
  4. The residence or domicile of the child or the child's parent(s)/custodian(s) is known to be a predominantly Indian community. See Chapter 14 for the separate definitions of "residence" and "domicile." There is an important legal and case planning distinction between the "residence" and "domicile" of an Indian child. If the social worker is uncertain as to the "residence" and "domicile" of an Indian child, the social worker must seek clarification from the social worker's supervisor and/or the attorney for the child's Tribe and/or the assigned Assistant Attorney General. The Tribe's social services program also may provide clarification of the child's status.
  5. The child is or has been a ward of any Tribal Court.
- E. Upon receipt of information that the child is of Indian ancestry, the social worker immediately takes necessary steps to identify the child's Tribe and contacts the Tribe for verification of the child's Indian status and invites the Tribe to participate in the case. See Chapter 03.25, below.
1. If the social worker does not know the identity of the child's Tribe, the social worker follows the procedures in Chapter 03.25(E), for contacting the BIA.
  2. The social worker also immediately takes steps to staff the case with LICWAC, if the child's Tribe is unavailable. See Chapter 10.02(C) regarding LICWAC.

**03.25 CONSIDERATIONS FOR IDENTIFYING ALASKA  
NATIVE/NATIVE AMERICAN CHILDREN**

- A. In order to comply with the spirit and intent of ICWA, the social worker must be able to identify whether or not any child and family to which the social worker provides services is affiliated with a Tribe. Given that Alaska has the highest proportion of tribal members relative to its total population and given that 40 percent of all federally recognized Tribes are located in Alaska, to be professionally responsible, the child protection and adoption agency workers must be especially vigilant in this regard.
  
- B. A child's affiliation with a Tribe centers around the issue of membership. Factors include a child's physical characteristics, blood degree of native ancestry, or the child's family's cultural practices, religious beliefs, lifestyle, socio-economic status or place of residence. None of the factors, in and of itself, determines a child's membership or eligibility for membership in a Tribe.
  - 1. Each of over 550 federally recognized Tribes in the country has a set of criteria, usually within the tribal constitution, which the Tribe uses to establish a person's membership in the Tribe, just as every country has criteria to establish a person as a citizen of the nation.
  - 2. With such a large number of Tribes in the country and over 225 Tribes in Alaska alone, the social worker must establish a working protocol that will help the social worker to screen each child's family. The social worker uses the protocol to determine if there is a reason to believe that the child might be a member of or eligible for membership in a Tribe and to verify the information if the social worker suspects the child may be a member or eligible for membership in a Tribe.
  - 3. Questions workers may use to screen families and to determine resources which may be available to verify a child's tribal affiliation follow.

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- Does either of the child's parents or blood relatives claim any degree of Alaska Native or Native American ancestry? If the answer is yes, it is possible that an ancestor of the child was a member of a Tribe and there is reason to believe that the child could be eligible for membership in a Tribe.
- Were or are either of the child's biological parents, grandparents, other blood relatives, or ancestors a member of a Tribe? If the answer is yes, it is possible that the child is a member or eligible for membership in the same Tribe(s).
- Is the child, either of the child's parents, or any blood relative a shareholder in an Alaskan Native Village Corporation or Regional Native Corporation established under the Alaska Native Claims Settlement Act? If the answer is yes, the child may be a member or eligible for membership in an Alaska Tribe located in that village or within the boundaries of the Regional Native Corporation. Not being a shareholder cannot be used to conclude that a person is not an Alaska Native, but if the person is a shareholder, then the person is an Alaska Native.
- Is the child, either parent, or any blood relative receiving or eligible to receive any type of services from an agency funded by the BIA or the Indian Health Service? If the answer is yes, the child may be a member or eligible for membership in a Tribe which may be located within the service area of the agency.

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- Did the child, either parent, or any of their ancestors live on or near an Indian Reservation, or a Rancheria in California, in the state of Oklahoma, or in or near a community where any of Alaska's 225 federally recognized Tribes are located? If the answer is yes, there is reason to believe that the child may be a member of or eligible for membership in a Tribe which may be located nearby the respective area.
4. The answers to any of the above questions can help the worker screen potential families and children who may be affiliated with a Tribe. The only way to verify tribal membership is to identify the Tribe involved and to contact a tribal representative who is authorized to provide documentation regarding a child's membership. Some of the aforementioned questions may help the worker narrow down the potential location of the Tribe(s) involved. Primary partner agencies, which can serve as locator as well as verification resources to the worker, include the following:
- a. The BIA in Washington, D.C. or any of its area Offices located throughout the country. Offices of the BIA serve as an important resource that can assist the worker in locating the appropriate Tribe(s) and, in some cases, may be able to provide verification as to an individual's tribal membership. The area office of the BIA serving Alaska is located in Juneau.

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- b. Any one of 12 Regional Native Nonprofit organizations in Alaska. These organizations provide BIA funded services to Tribes within specific geographic boundaries of the state, can assist in locating the appropriate Tribe(s), and may house tribal enrollment records and program case files which could help to verify tribal membership for individuals of some Tribes located in their service area. A 13<sup>th</sup> regional corporation serves Alaska Natives who reside outside Alaska or who resided outside Alaska when the corporations were established.
- c. Tribal offices located in villages and communities throughout the country. Many Tribes have established locally based service centers on or near their tribal communities. These offices, through the Tribal Councils, provide verification of tribal membership and serve as the most important resource to the worker regarding this issue.

**03.30 IDENTIFICATION OF CHILD'S INDIAN STATUS**

- A. If the social worker knows the identity of the child's Tribe, the social worker contacts the Tribe by telephone as quickly as possible, and in no event later than one working day following discovery of the Tribe's identity. The social worker follows the telephone call with a written request for verification of the child's Indian status. The social worker uses *Inquiry to Indian Tribe, Band, or Nation*, DSHS 09-539, and *Family Ancestry Chart*, DSHS 04-220(X). The social worker must send the inquiry letter, DSHS 09-539, to the tribal ICW director and to tribal enrollment officer.
- B. In seeking to verify the child's Indian status, the social worker inquires as to whether the child or child's Indian parent(s) was previously adopted.

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1. If the child or child's Indian parent(s) was previously adopted, the social worker makes reasonable attempts to obtain available information regarding the identity of the child's/Indian parent's biological family. A child's adoption record may be opened to help obtain information regarding the child's ancestry.
  2. The social worker promptly provides such information to the child's Tribe or, if the identity of the child's Tribe is unknown, to the Bureau of Indian Affairs. See 03.30(E) below.
- C. If the child is affiliated with more than one Tribe, the social worker contacts each Tribe by telephone and sends each Tribe a written request for verification of the child's Indian status.
- D. When the social worker contacts a Tribe for verification of Indian status as required above, the social worker also asks whether the Tribe considers the child to be Indian regardless of the child's membership status. The verification forms required above contain this additional request for information.
- E. Only when the identity of the child's Tribe is unknown or uncertain, the social worker contacts the Portland area office of the BIA by telephone. See Chapter 12 for BIA contact information. The social worker follows the telephone call with a written request for verification of the child's Indian status. The social worker uses *Inquiry To Bureau of Indian Affairs*, DSHS 09-536, and *Family Ancestry Chart*, DSHS 04-220(X).
- F. If the social worker has reason to believe the child is Canadian First Nations but does not know the identity of the child's Tribe/band, the social worker immediately contacts the ICW program manager at CA Headquarters by telephone to request assistance in identifying the child's Tribe/band. The social worker follows the telephone call with a written request for assistance.



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- G. Until the social worker verifies that a child is or is not an Indian child, the social worker presumes the child to be an Indian child for planning and service delivery purposes.
1. Unless the social worker learns that a child meets one of the definitions of Indian child, in section 03.10, the social worker asks the child's parent(s)/custodian(s) and the child (if of sufficient age) whether an off-reservation Indian/Alaska Native community organization considers the child to be Indian.
  2. The social worker attempts to contact any Tribe or organization identified in response to the above inquiry. When the social worker identifies an organization, the social worker asks the organization whether it considers the child or the child's parent(s) to be Indian. The social worker uses *Inquiry To Indian Organization*, DSHS 09-775.
  3. When the social worker identifies a Tribe, the social worker contacts the Tribe as required in section 03.25(A), above.
- H. The social worker attempts to obtain a written response to requests for verification of a child's Indian status. At a minimum, the social worker includes written documentation in the service file of the name, address, and telephone number of the person who provided information about the child's Indian status and a summary of the information provided.
- I. The social worker must request LICWAC assistance in obtaining verification of a child's Indian status. See Chapter 10 for LICWAC procedures.

**03.35 DETERMINATION OF TRIBAL MEMBERSHIP STATUS**

- A. Only a Tribe makes determination of a child's tribal membership status. A tribal determination of membership or eligibility for membership is final. The social worker does not make the determination of an Indian child's membership or eligibility status.

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1. Except as otherwise provided in Chapter 11, the term "Indian child's Tribe" means the federally recognized Tribe(s) in which an Indian child is a member or eligible for membership.
  2. If an Indian child is a member or eligible for membership in more than one Tribe, the social worker provides notification to each of the Tribes and, with respect to each Tribe, follows all other applicable procedures in this manual.
- B. If the social worker contacted the BIA because the social worker did not know the identity of the child's Tribe, the BIA's determination regarding a child's tribal membership status is final unless later contradicted by a Tribe identified as the Indian child's Tribe.
- C. See Chapter 11 for procedures regarding determination of Canadian First Nations or Recognized Indian children who are not federally recognized.

**03.40 WHEN THE CHILD MAY BE CONSIDERED NON-INDIAN**

- A. CA staff must follow the provisions of this manual until the social worker has verified with reasonable certainty that a child does not meet the definition of Indian child, as found in Chapter 03.10(A). If the child does not meet any of the above definitions, CA staff will consider the child non-Indian and the provisions of this manual do not apply.
1. Even if the Tribe and/or the LICWAC verifies a child with Indian heritage to be a non-Indian for the purpose of this manual, the social worker must develop a case plan for that child in accordance with the requirements for culturally appropriate services in the *CA Case Services Policy Manual*, Chapter 1000, section 1610.

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2. The social worker documents in the service record the actions taken to identify a child's Indian status in accordance with the requirements of this chapter and the basis for concluding that none of the above definitions apply.
- B. In cases where the social worker has requested verification of a child's Indian status as required by this chapter and has not received a response to such request(s), the social worker may consider a child non-Indian and need not follow the provisions of this manual if **all** of the requirements below are satisfied:
1. The social worker has sent a written request for verification of the child's Indian status to the Tribe and/or the BIA as required in Chapter 03.25.
  2. If the Tribe or BIA has not provided verification within 30 calendar days following the date the social worker sent the written request for verification, the social worker has sent a second written request and has contacted the Tribe and/or BIA by telephone.
  3. The Tribe or the BIA has not provided verification within 30 calendar days following the date that the social worker sent the second written request and neither the Tribe nor the BIA has requested additional time for verification.
  4. If the Tribe or the BIA requested additional time for verification and the Tribe or the BIA has not provided verification within 60 calendar days after the first written request for verification was sent. The social worker must follow up with the Tribal Council. See paragraph B(2), above.
  5. The social worker has provided all available information regarding the child's family history to the Tribe or the BIA and has taken reasonable steps to obtain and provide any additional information requested by the Tribe or the BIA.

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6. The child is not an Canadian First Nations or Recognized Indian child who is not federally recognized. See Chapter 11 regarding Canadian and Unrolled Indian children not federally recognized.
  7. The social worker has documented in the ICW section of the child's service file all information necessary to demonstrate compliance with the above requirements, including the name, address, and telephone number of the person(s) contacted by telephone within the Tribe and/or the BIA.
- C. The social worker must make copies of the inquiry, the ancestry chart, and replies from the Tribes and provide them to the LICWAC.
- D. LICWAC makes the determination of non-Indian status and completes the form.
- E. The social worker must copy the *Determination of Non-Indian Status* form and place it in the ICW section of the case record.
- F. If the social worker obtained verification from the Tribe or the LICWAC of a child as non-Indian in accordance with the provisions of paragraph C, above, and the Tribe and/or BIA subsequently verifies that the child is Indian as defined in Chapter 03.10, the social worker follows the requirements of this manual in performing casework or placement activities after the date the social worker verifies the child's Indian status.
- G. A Tribe and/or the BIA may verify a child's Indian status orally or in writing. If the verification is oral, the social worker documents in the service record the date the Tribe or BIA provided verification and the name, address, and phone number of the person who provided the verification.

**03.45 TRIBAL, BUREAU OF INDIAN AFFAIRS, AND CANADIAN TRIBE/BAND CONTACT INFORMATION**

For information on contacting the Tribes, BIA, and Canadian Tribe/Bands, see Chapter 12 of this manual.